# Law Enforcement Digest

April 1999

## HONOR ROLL

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**489th Session, Basic Law Enforcement Academy - December 9, 1998 through March 9, 1999**

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## WASHINGTON STATE COURT OF APPEALS

**BELT-LESS MV PASSENGER IN MID-20'S CLAIMING NEVER TO HAVE HAD ID LAWFULLY DETAINED FOR WARRANT CHECK; ALSO, "AUTOMATIC STANDING" ADDRESSED**

State v. Chelly, ___ Wn. App. ___ (Div. I, 1999) [970 P.2d 376]

Facts and Proceedings: (Excerpted from Court of Appeals opinion)

> On April 9, 1996, Officer Thacker of the Everett Police Department was patrolling a known drug area in Everett. He received information that for a period of at lease the last year, a white Monte Carlo automobile driven by a black male had been entering this area and distributing cocaine. Officer Thacker observed a white Monte Carlo containing three dark-complexioned males exiting the apartment complex. The officer followed the vehicle, noticed that one of its rear brake lights was not working, and stopped the vehicle. Chelly, the driver of the vehicle, identified himself to Officer Thacker.
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> The officer saw that the two passengers in the vehicle were not wearing safety belts, a traffic infraction. He asked the two passengers if they could present identification. The passenger in the front seat handed an identification card to another officer on the scene. Martinez, the passenger in the back seat, stated that he had no identification on him. Officer Thacker then asked Martinez if he had ever had identification. Martinez responded that he had not. Martinez appeared to the officer to be in his mid-20's. According to Officer Thacker, it is highly unusual for anyone over 16 years of age to state that he has never had identification. Based on his experience, Officer Thacker anticipated that because Martinez said he has no identification, he was likely to give a false name in order to conceal his identity, probably due to outstanding warrants for his arrest. Officer Thacker also noticed that all three of the occupants were exceedingly nervous and sweating, and that none of them made eye contact with him.
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> Hearing Martinez's response and anticipating being given a false name, Officer Thacker decided to take Martinez out of the earshot of the other occupants in order to prevent them from corroborating Martinez's false name. Because the automobile was a two-door, it was necessary for the officer to ask Chelly to exit the vehicle in order to allow Martinez to get out of the back seat. Once separated, Martinez gave Officer Thacker what turned out to be a false name, a false birth date, and a correct social security number. The officers ran the information in a warrants check and came up with a number of warrants based on names and birth dates that were very similar to those Martinez gave.
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> Officer Thacker confronted Martinez with the results of the warrants check, but Martinez maintained that the name and birthdate he gave were accurate. The officer then questioned Chelly, who "correctly" identified Martinez. The officer arrested Martinez on the outstanding warrants. The search of the automobile incident to that arrest revealed a firearm under the front seat and 164 grams of cocaine in the unlocked console between the front bucket seats.
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> Chelly was charged with possession of a controlled substance with intent to manufacture or deliver while armed with a firearm. He moved to suppress the evidence uncovered during the search of the vehicle on the ground that the detention went beyond the permissible scope of a detention for a traffic infraction. The trial court denied his motion, the case proceeded to trial, and Chelly was found guilty as charged.

ISSUES AND RULINGS: 1) Does the "automatic standing" rule of the Washington constitution permit Chelly to challenge the drug possession charges based on the extended detention of his passenger, Martinez? (ANSWER: Yes) 2) Was the extended detention of Martinez to check for warrants lawful? (ANSWER: Yes) Result: Affirmance of Snohomish County Superior Court conviction and sentence of Jerry Chelly, Jr. for possession of cocaine with intent to manufacture or deliver while armed with a firearm.

ANALYSIS: (Excerpted from Court of Appeals opinion)

1) Automatic Standing

> Under the automatic standing rule, "a defendant has standing to claim the constitutional protection from unreasonable searches and seizures if he was legitimately on premises where a search occurred and if the fruits of the search are proposed to be used against him." Thus, under the state constitution, a defendant who has been charged with an offense that has possession as an element has automatic standing to challenge the search that led to the discovery of the substance the defendant is charged with possessing. The United States Supreme Court has abolished automatic standing under the Fourth Amendment. Our [Washington] Supreme Court, however, announced in a plurality opinion that notwithstanding the United States Supreme Court's decisions, it would continue to adhere to the automatic standing rule under the state constitution. [State v. Simpson, 95 Wn.2d 170 (1980)] In a later case, the court noted that although the automatic standing rule had been called into question under federal law, it declined to abolish the rule under state law. [State v. Carter, 127 Wn.2d 836 (1995) **Jan 96 LED:07**] Thus, the automatic standing rule remains viable under our state constitution and application of the rule to the present case confers standing on Chelly to challenge the search and seizure.

2) Extended Detention of Martinez

> Failure to wear a safety belt while operating or riding in a motor vehicle is also a traffic infraction. At the time of the incident in question, the statute governing stops for traffic infractions gave police officers the authority to detain a person for a reasonable period of time necessary to identify the person, check the status of the person's license, insurance identification card, and the vehicle's registration, and complete and issue a notice of traffic infraction. **[Court's footnote**: *Former RCW 46.61.021(2). In 1997, this subsection was amended to add "check for outstanding warrants" to the list of purposes for which a person stopped for a traffic infraction may be detained.* **See Nov 97 LED:03.]** "Any person requested to identify himself or herself to a law enforcement officer pursuant to an investigation of a traffic infraction has a duty to identify himself or herself, give his or her current address, and sign an acknowledgment of receipt of the notice of infraction." RCW 46.61.021(3). The requirement that one identify himself pursuant to an investigation of a traffic offense includes passengers of a vehicle stopped for a traffic infraction where the officer has an independent basis, such as a safety belt violation, for requesting a passenger's identification.
>
> Noticing that the passengers were not wearing safety belts, Officer Thacker had the authority to detain them for a reasonable period of time necessary to identify them. The legitimate scope of the stop properly expanded at that point beyond a stop only for the initial traffic infraction, the inoperative brake light. Pursuant to the statute, RCW 46.61.021(3), the passengers had a duty to identify themselves to

Officer Thacker. Any person who willfully fails to fulfill this statutory duty to identify himself or herself when requested to do so as part of an investigation of a traffic infraction is guilty of a misdemeanor. When Martinez told Officer Thacker that he did not have, and had never possessed, identification, Officer Thacker suspected, based on the circumstances including his 15 years of experience as a police officer and Martinez's age and demeanor, that Martinez was trying to hide his identity and would likely provide a false name. **[Court's footnote**: *"Vehicle passengers are not required to carry driver's licenses or other identification." State v. Cole, 73 Wn. App. 844 (1994)* **Sept 84 LED:10** *(citing State v. Barwick, 66 Wn. App. 706 (1992)* **Feb 93 LED:07***. There is no support for the claim that Officer Thacker's decision to detain Martinez was based solely on the fact that Martinez was not carrying identification at the time of the stop*.**]** Under the totality of the circumstances, the specific and articulable facts taken together with rational inferences from those facts, we find Officer Thacker's detention of Martinez for a reasonable time for the purpose of ascertaining his true identity was warranted.

It is on this ground that the present case is distinguishable from State v. Cole, 73 Wn. App 844 (Div. III, 1994) **Sept 94 LED:10**. There, an officer stopped a car for three traffic infractions. As another officer approached the passenger door, he noticed that Cole, the passenger, was not wearing a safety belt. Although Cole did not have identification with him, he did give the officer his name and address when asked to do so. Unlike in the present case, the officer had no reason to believe that the name and address Cole provided were false. Because Cole complied with his duty in RCW 46.61.021(3) to identify himself and provide his current address, the officer had not authority to detain him further by asking him to exit the car while the officer confirmed his identity. In the present case, Martinez did not comply with this duty and Officer Thacker had a reasonable suspicion that Martinez was not going to supply his true identity.

We reject Chelly's contention that the warrant check rendered the detention illegal. Once Martinez gave false identifying information, it was reasonable for the officer to suspect that Martinez was attempting to hide his identity for a reason, most likely because of outstanding arrest warrants. Checking for outstanding warrants during a valid criminal investigatory stop is a reasonable routine police practice and warrant checks are permissible as long as the duration of the check does not unreasonably extend the initially valid contact. There is nothing in the record to suggest that the warrant check unreasonably added to the length of the detention.

The Supreme Court's opinion in State v. Rife, 133 Wn.2d 140 (1997) **Oct 97 LED:03** is also distinguishable. In that case, the defendant, stopped for a traffic infraction, gave the police officer identification as requested. Despite the defendant's compliance with the duty to provide identification, the officer proceeded to make a radio check for outstanding warrants. The officer arrested Rife on two outstanding warrants and found a bindle of heroin in Rife's pocket during a search incident to arrest. The court held that the warrant check was unlawful because neither the Seattle Municipal Code nor RCW 46.61.021 gave the officer authority to search for outstanding arrest warrants upon making a stop for a traffic infraction. **[Court's footnote**: *Since the Rife opinion, RCW 46.61.021 has been amended to confer on officers the authority to check for outstanding warrants during stops for traffic infractions.* ***Nov 97 LED:03*****]** Unlike the instant case, the officer who detained Rife had no reason to suspect that the identification was false.

Thus, unlike here the officer in Rife had no reason to believe that Rife breached his statutory duty to identify himself during an investigation of a traffic infraction or that Rife was seeking to hide his identity from the officer because of outstanding arrest warrants. Once Rife complied with the statute, the officer had no authority to detain Rife further. By contrast, Officer Thacker had a reasonable suspicion that any oral identification provided by Martinez would be false and that Martinez would thereby fail to comply with the statutory duty to identify himself. At that point, the scope of the permissible detention broadened beyond that permitted by RCW 46.61.021 and Officer Thacker's authority was no longer defined by that statute. Under the circumstances, the officer's running the warrants check was reasonable and permissible.

Once an officer discovers the existence of an outstanding warrant for a person's arrest, the officer has a duty to arrest. Upon lawfully arresting Martinez on the outstanding warrants, Officer Thacker had the authority to conduct a search of the automobile incident to the arrest. "A search of the passenger compartment of a vehicle, excluding locked containers, immediately after arrest for weapons or destructible evidence is valid even when a passenger, not the driver, is arrested." The firearm and the drugs found in Chelly's automobile were found in the passenger compartment and not in any locked container. Thus, the search was valid and the evidence properly admitted.

**LED EDITOR'S COMMENTS:**

**1) Directing violator passenger out of car as officer-discretion safety measure. Here, Division One of the Court of Appeals distinguishes on its facts the Division Three decision in State v. Cole, 77 Wn. App 844 (Div. III, 1994) Sept 94:10. In Cole, Division Three held that an officer in a traffic stop lacked authority to direct an unbelted vehicle passenger to step out of the vehicle. We believe that the Chelly Court should instead have declared that the Cole Court erred when it overlooked the officer-safety cases giving officers automatic authority to direct violators to step from their vehicles.**

**In last month's LED, we digested the January 1999 Washington Supreme Court decision in State v. Mendez, 137 Wn.2d 208 (1999). Mendez recognizes that under the Washington constitution, article 1, section 7, police have automatic authority to order drivers out of, or back into, their vehicles in routine traffic stops. However, Mendez holds also that police do not have automatic authority under article 1, section 7 to order non-violating passengers out of, of back into, vehicles involved in such routine traffic stops. The rationale of Mendez is that the fact that the officer is investigating a suspected traffic violation by a driver carries certain inherent risks to the officer. Therefore, an order to step out of, or back into the vehicle is justified as a de minimis intrusion on the liberty and privacy rights of the driver. While Mendez holds that the risk does not inherently present itself with non-violator passengers, we think that it is impossible to distinguish between violator drivers and violator passengers. Hence, we think that the "inherent risk" (our phrase, not the Court's) rationale applies equally to investigations of suspected violations of the law by passengers, we believe. Accordingly, we think that an officer has automatic authority to direct an unbelted passenger out of, or back into, a stopped vehicle.**

**2) Detaining infraction violator for identification purposes. We are working on a short but nonetheless ambitious article for the May 99 LED. Inspired by a recent question we had a**

**difficult time sorting out, the article will attempt to synthesize case law, statutes and ordinances on the scope of police authority to detain for identification purposes: a) drivers and passengers who commit traffic infractions, as well as b) persons who commit non-traffic infractions.**

**CONVICTION FOR "INVOLVING A MINOR IN A DRUG TRANSACTION" UPHELD**

State v. Reddick, ___ Wn. App. ___ (Div. I, 1999) [970 P.2d 813]

Facts and Proceedings: (Excerpted from Court of Appeals opinion)

> On February 12, 1997, Seattle Police Officer Rolf Norton was working undercover in a buy-bust operation near a school bus route stop in downtown Seattle. He told Terry Jefferson and Sammy Barker that he was looking for "a twenty," i.e., $20 worth of narcotics, and Barker agreed to help arrange the deal. Lawrence Reddick -- who was arm-in-arm with Katie Davis (D.O.B.6/28/79) -- approached Officer Norton, Jefferson, and Barker. Barker motioned to Reddick and said, "He's got it." In response, Reddick nodded. Jefferson made a hand-to-hand exchange with Reddick and then handed Officer Norton a rock of crack cocaine in exchange for a $20 bill, which Jefferson gave to Reddick. Davis was present during this transaction.
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> After Reddick and Davis walked away, Seattle Police Officer Randall Jokela recovered from Reddick the prerecorded $20 bill that was assigned to Officer Norton for this buy-bust operation. He then arrested Reddick. The State charged Reddick with one count of delivery of cocaine within 1,000 feet of a school bus route stop, and one count of involving a minor in a drug transaction. A jury convicted Reddick as charged, and the trial court sentenced him within the standard range.

ISSUE AND RULING: Where a drug dealer has his minor girlfriend on his arm when he does a street drug deal, does this constitute "involving a minor in a drug transaction" under RCW 69.50.401 (f)? (ANSWER: Yes) Result: Affirmance of convictions of Lawrence Reddick 1) for involving a minor in a drug transaction and 2) for delivery of cocaine within 1000 feet of a school bus route stop.

PERTINENT STATUTE:

RCW 69.50.401(f) provides:

> "It is unlawful to compensate, threaten, solicit, or in any other manner involve a person under the age of eighteen years in a transaction unlawfully to manufacture, sell, or deliver a controlled substance."

ANALYSIS: (Excerpted from Court of Appeals opinion)

> Reddick contends that the State failed to present sufficient evidence to support his conviction for involving a minor in a drug transaction. At trial, the State presented evidence that Reddick approached the drug transaction arm- in-arm with Davis, who the parties stipulated was under the age of 18, and then sold a rock of crack cocaine while she was present. By bringing Davis to the drug transaction and allowing her to remain, Reddick obliged Davis to become

> associated with the drug transaction. Reddick's affirmative acts were sufficient to permit a rational trier of fact to find beyond a reasonable doubt that Reddick involved Davis in a drug transaction, notwithstanding Davis' participation or lack thereof in the delivery.

**LED EDITOR'S NOTES: In Reddick and in a companion case, State v. Hollis, the Court of Appeals addresses two other issues under the "involving a minor" statute, in addition to the "sufficiency of the evidence" question addressed above. First, the Court rejects a "void-for-vagueness" constitutional challenge to the statute. Along the way in its discussion of this issue, the Court explains as follows the scope of the prohibition of RCW 69.59.401(f):**

> **The involving a minor in a drug transaction statute does not require that the minor actually participate in the drug transaction. In fact, the minor's culpability and actions - which are proscribed under other statutes - are inapposite for the purposes of the involving a minor in a drug transaction statute. Instead, the focus is on the defendant's affirmative acts. A defendant violates RCW 69.50.401(f) if he or she compensates, threatens, solicits or in any other manner involves - i.e., surrounds, encloses, or draws in - a minor in an unlawful drug transaction, or obliges a minor to become associated with the drug transaction, e.g., by inviting or bringing a minor to a drug transaction, or allowing the minor to remain during a drug transaction.**
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> **An ordinary person should understand that Hollis' actions of asking and convincing Brown - who was a minor - to unlawfully sell cocaine to Officer Fox are proscribed by this statute. Likewise, an ordinary person should understand that Reddick's acts of approaching the drug transaction arm-in-arm with a minor, Davis, and allowing that minor to remain present during the drug transaction, thereby obliging her to become associated with the drug transaction, are also proscribed under this statute.**
>
> **Thus, RCW 69.50.401(f)-as applied to Hollis and Reddick - defines the criminal offense with sufficient definiteness and provides ascertainable standards of guilt to protect against arbitrary enforcement. Because Hollis and Reddick failed to prove the statute's unconstitutionality beyond a reasonable doubt, we conclude that RCW 69.50.401(f), as applied to them, satisfies the requirements of due process and is not unconstitutionally vague.**

**Second, the Court rejects a sentencing challenge by defendants Reddick and Hollis. The two crimes of "unlawful delivery" and "involving a minor" are to be separately punished, even if they arise out of the same incident, the Reddick/Hollis Court holds.**

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## BRIEF NOTES FROM THE WASHINGTON STATE COURT OF APPEALS

**(1) NO NEED TO PROVE DEFENDANT'S KNOWLEDGE OF VICTIM/OFFICER'S STATUS IN PROSECUTION FOR THIRD DEGREE ASSAULT OF LAW ENFORCEMENT OFFICER –** In State v. Brown, ___ Wn. App. ___ (Div. I, 1999) [1999 WL 89098], in a case where a drug dealer pulled a fake

gun on undercover Seattle Police officer Greg Neubert, Division One changes course to a pro-government direction in its interpretation of RCW 9A.36.031(1)(g), which defines the crime of third degree assault of a law enforcement officer performing official duties at the time of the assault.

Defendant Joseph Brown, aka Joseph Palmer, appealed his conviction of third degree assault. Brown challenged jury instructions defining the crime. Brown argued that the jury should be instructed that one can be convicted under RCW 9A.36.031(1)(g) only if the State proves the defendant's knowledge both that the person assaulted was a law enforcement officer and that the officer was performing official duties at the time of the assault. Division One holds in Brown that the State is not required to prove defendant's knowledge of either fact. The Brown Court thus disagrees with a prior Division One opinion, as well as prior Division Three and Division Two opinions (see Division Two decision in State v. Filbeck, 89 Wn. App. 113 (Div. II, 1997) **May 98 LED:18)**.

All that need be proven under RCW 9A.36.031(1)(g), the Brown Court holds, is: a) that defendant intentionally assaulted a person, and b) that the assault victim was in fact a law enforcement officer performing official duties at the time of the assault. Therefore, the Brown Court declares, it is irrelevant whether defendant knew of the victim's status.

Result: Affirmance of King County Superior Court conviction for third degree assault of a law enforcement officer under RCW 9A.36.031(1)(g).

**(2) DRIVING OR RIDING IN CAR ANY DISTANCE KNOWING THAT DRIVER LACKS PERMISSION QUALIFIES AS "JOYRIDING"** -- In State v. Womble, ___ Wn. App. ___ (Div. I, 1999) [969 P.2d 1097], a joyriding defendant loses his argument that he could not be convicted of taking a motor vehicle without permission under RCW 9A.56.070, where the vehicle never left the owner's driveway.

Anthony Allen Womble and his friend were caught red-handed by the owner of a car they had started up and driven about 25 to 40 feet along the owner's driveway. They got out of the car and fled when confronted by the car's owner, but they were later arrested. Womble, the passenger, was charged and convicted under RCW 9A.56.070. The statute provides:

> Every person who shall without the permission of the owner or person entitled to the possession thereof intentionally take or drive away any automobile or motor vehicle [that is] the property of another, shall be deemed guilty of a felony, and every person voluntarily riding in or upon said automobile or motor vehicle with knowledge of the fact that the same was unlawfully taken shall be equally guilty with the person taking or driving said automobile or motor vehicle and shall be deemed guilty of taking a motor vehicle without permission.

On appeal, one of Womble's challenges to his conviction focused on the word "away" in the statute. He argued that under the statute a vehicle should not be deemed to have been driven "away" unless the vehicle left the premises (here, the 100 foot driveway) or at least the curtilage of the home. The Court of Appeals applies common sense and the "ordinary meaning" standard to reject Womble's strained reading of the statutory language. Moving a vehicle of another any distance without permission constitutes moving it "away."

The Womble Court also provides as follows an alternative legal basis for upholding Womble's conviction under RCW 9A.56.070:

> Although neither party made the argument, we note that because Womble was the rider, not the driver, the State had to prove only that he voluntarily rode in the vehicle with knowledge that it was "unlawfully taken." Womble does not contend, nor could

> he, that the vehicle was not "unlawfully taken." This alternative basis supports the sufficiency of the evidence in this case.

Finally, the Court goes on to explain why the evidence was sufficient to allow a jury to infer that Womble "knew" the vehicle was taken without permission. His claim that he thought the car belonged to his friend and that she had parked her car a half mile from the place where the two had met earlier while attending a party in a residential area was sufficiently implausible, and the fact that he fled when confronted by the car's owner was sufficiently suspicious, to justify submitting the case to the fact-finder. The Womble Court distinguishes a prior precedent:

> This case is distinguishable from State v. L.A., 82 Wn. App. 275 (Div. I, 1996) [**Oct 96 LED:10**] where we are concluded that the evidence was insufficient to establish knowledge. There, the evidence established only that the defendant was 14 years old, that she was driving a car that had been taken without the owner's permission, and that the car had a broken rear window. We concluded that, "[i]n the absence of corroborative evidence such as a damaged ignition, an improbable explanation of fleeing when stopped," the evidence was insufficient to establish knowledge. Here, Womble both offered an arguably implausible explanation and fled when confronted by Wilson. There was sufficient evidence to support the conviction.

Result: Affirmance of Snohomish County Superior Court conviction for taking a motor vehicle without permission.

**(3) PASSENGER'S ACQUIRING OF KNOWLEDGE, AFTER GETTING IN CAR, THAT THE CAR IS STOLEN CAN SUPPORT "JOYRIDING" CONVICTION** – In State v. Phimmachak, 93 Wn. App. 11 (Div. I, 1998), the Court of Appeals for Division One rejects defendant's argument that he could not be convicted of joyriding as a car passenger if he first learned that the car as stolen after getting into the car.

The Court of Appeals describes the facts in the case as follows:

> The police lifted Phimmachak's fingerprints from the driver's side door of Malcolm Lord's stolen pickup truck. The police found the abandoned truck just hours after Lord had reported it stolen from an Everett cinema parking lot. The ignition cylinder was removed from the right steering column and the driver's side lock was broken. Also missing were the stereo and some expensive eyeglasses left in the truck by Lord's optician wife.
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> Detective Patrick Fagan contacted Phimmachak. Detective Fagan testified that Phimmachak at first denied any involvement but when confronted with the fingerprint evidence, Phimmachak admitted that a friend gave him a ride in the stolen truck from Everett to Bothell. Phimmachak told the detective that he learned during the ride that his friend had stolen the truck for its parts. When told by the detective that his prints were found on the driver's side, Phimmachak claimed he got into the truck through the driver's door. Phimmachak did not testify.
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> Before closing, defense counsel took exception to the standard "to convict" instruction, asking instead that "under the riding theory" the court instruct the jury that "the State has to prove that prior to the time of riding the defendant knew that the automobile was unlawfully taken[.]" The court declined, stating that such an instruction was not a correct statement of the law but that it would allow the defense to argue unwitting, involuntary riding. But because there was no instruction proposed regarding such a defense, the court stated it would not give one.

The jury convicted Phimmachak as charged.

The joyriding statute at RCW 9A.56.070(1) reads in pertinent part:

> Every person who shall without the permission of the owner or person entitled to the possession thereof intentionally take or drive away any automobile or motor vehicle, ... the property of another, shall be deemed guilty of a felony, and every person voluntarily riding in or upon said automobile or motor vehicle with knowledge of the fact that the same was unlawfully taken shall be equally guilty with the person taking or driving said automobile or motor vehicle and shall be deemed guilty of taking a motor vehicle without permission.

The Court of Appeals explains its decision as follows:

> Phimmachak's sole argument is that the court erred in refusing to instruct the jury that the State must prove he knew the truck was stolen before riding in it. In addition to the fact that Phimmachak cites no direct authority supporting this proposition, it is contrary to the plain language of the "joyriding" statute, RCW 9A.56.070(1).
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> Under that statute, the State must prove either an unlawful taking, or riding in the vehicle with knowledge that it was unlawfully taken. To convict under the riding alternative, the State must prove knowledge and that the defendant voluntarily rode in the stolen vehicle. The statute's plain language makes clear that the focus is on the legality of the ride and not on the entry. Therefore, regardless of whether the entry was legal, an individual is guilty of taking and riding if he or she thereafter voluntarily rides in the vehicle with knowledge it was stolen. Because Phimmachak's proposed instruction would have constituted a misstatement of the law, the trial court did not err in refusing it.

[Footnotes and citations omitted]

Result: Affirmance of Snohomish County Superior Court conviction of Vilisak Chuck Phimmachak for riding in a motor vehicle without permission.

**(4) COURT UPHOLDS "MURDER ONE" CONVICTION OF ENRAGED DRIVER WHO RAN STOP LIGHT AT HIGH SPEED** – In State v. Barstad, __ Wn. App. ___ (Div. III, 1999) [970 P.2d 324], the Court of Appeals holds that under certain circumstances a person who causes the death of another while driving a motor vehicle can be convicted of the "extreme indifference" variation of first degree murder.

James B. Barstad killed two young women in a crash involving multiple cars when he sped through a red light at 55 to 60 miles per hour at a busy intersection in the City of Spokane in the early evening hours of Saturday, May 25, 1996. Other motorists testified that in the moments immediately before the fatal collisions, they saw Barstad speed through another red light and veer out of traffic onto the lawn of a business and then veer back into traffic, making threatening gestures and "flipping off" other drivers.

Immediately after the fatal collisions, Barstad was openly hostile to his victims and others in the area. He showed no remorse until he was being taken away to the hospital by an officer. Barstad's blood later registered .16 blood-alcohol level, but the evidence at trial was that he was coherent and not "falling down drunk" at the time of the crash. Barstad told an officer at the scene that his driving was not affected by the alcohol, but that his emotional state was affected by the alcohol.

At trial, the jury learned that Barstad had been with his girlfriend drinking alcohol most of the afternoon that Saturday, and he had gotten into a fight with her. He had headed downtown in an extremely angry state just moments before the fatal collisions.

The State charged Barstad with two counts of first degree murder under the part of RCW 9A.32.030 that punishes conduct manifesting an "extreme indifference" to human life and that results in another's death. At trial, Barstad claimed that the reason he sped through the red light was that he realized he could not stop in time, and he hoped to shoot through a gap in the traffic. The jury convicted him of first degree murder on both counts.

The Court of Appeals rejects Barstad's argument that the vehicular homicide statute supersedes the murder statute in circumstances in which the defendant causes the death of another through reckless or drunken driving. RCW 9A.32.030(1)(b) makes it first degree murder to cause the death of a person when, "under circumstances manifesting an extreme indifference to human life, [one] engages in conduct which creates a grave risk of death to any person." RCW 46.61.520 makes it vehicular homicide for a driver to cause the death of another person if the driver was operating a motor vehicle while DUI, with disregard for the safety of others, or "in a reckless manner."

Barstad argued on appeal that he caused the deaths through reckless driving, and that he therefore should be chargeable only under the vehicular homicide statute. The Court of Appeals acknowledges that mere reckless driving which results in a death cannot be prosecuted as an "extreme indifference" first degree murder. However, the Barstad Court holds that "reckless" driving can be prosecuted as murder where the facts demonstrate culpability (i.e., guilty mental state) going beyond recklessness to "evidence the defendant's subjective knowledge his act is extremely dangerous [to human life] and his indifference to the consequences."

In Barstad, there was substantial evidence that the defendant's anger over the fight with this girlfriend fueled a knowing decision to place other human beings at great risk to human life with indifference to the consequences. This evidence supported his conviction for first degree murder under RCW 9A.32.030(1)(b), the Barstad Court holds.

Result: Affirmance of Spokane County Superior Court convictions of Jason B. Barstad on two counts of first degree murder.

**(5) REAL PROPERTY FORFEITURE ACTION DISMISSED BECAUSE "ARREST" WARRANT FOR THE PROPERTY NOT SERVED** – In Bruett and Kalsbeek v. Real Property Known As 18328 11th Ave. N.E., Seattle, 93 Wn. App. 290 (Div. I, 1998), the State Court of Appeals dismisses a drug forfeiture action under RCW 69.50.505 against real property owned by Sam and Paula Feagin.

WSP and the City of Lynnwood began a real property drug forfeiture action against real property in the City of Lynnwood. After the trial court judge issued an "arrest" warrant against the real property pursuant to RCW 69.50.505, the government agencies failed to serve a copy of the warrant on either a) the owners of the property or b) the secured creditor. Interpreting RCW 69.50.505 strictly, the Court of Appeals rules that the forfeiture action must be dismissed for the government's failure to strictly comply with the statute.

Result: Reversal of King County Superior Court order denying the Feagins' motion to dismiss the forfeiture action for failure to strictly comply with RCW 69.50.505; real property ordered returned to the Feagins.

**(6) TRIAL COURT IN "ELUDING" CASE SHOULD NOT HAVE ADMITTED TROOPER'S**

**TESTIMONY THAT DRIVER WAS TRYING TO GET AWAY –** In State v. Farr-Lenzini, ___ Wn. App. ___ (Div. II, 1999) [970 P.2d 313], the Court of Appeals holds that the trial court committed reversible error in a "felony eluding" prosecution when the trial court permitted, over defense counsel's objection, the following question and answer during the State's presentation of the testimony of the arresting WSP trooper:

> Q: Just based on your training and experience, do you have an opinion as to what the defendant's driving pattern exhibited to you?
>
> A: It exhibited to me that the person driving that vehicle was attempting to get away from me and knew I was back there and refusing to stop.

The Court of Appeals rules that the trooper's testimony was an opinion which should not have been admitted under the evidence rule for either lay opinion or for expert opinion. Under the circumstances of this case, the admission of the trooper's opinion invaded the province of the jury and was reversible error, the Farr-Lenzini Court holds.

Result: Reversal of Clark County Superior Court conviction of Lisa Ann Farr-Lenzini under RCW 46.61.024 for attempting to elude a police officer; case remanded for re-trial.

**(7) ACCOMPLICE TO GAY-BASHING ATTACK PUNISHABLE FOR "MALICIOUS HARASSMENT" BASED ON OTHER PARTICIPANT'S MALICE** – In State v. Lynch, ___ Wn. App. ___ (Div. I, 1999) [970 P.2d 769], the Court of Appeals rejects the argument of a defendant convicted of malicious harassment as an accomplice in a gay-bashing assault.

Lynch was with two male friends when the other two young men started harassing a gay couple. The other two young men made lewd and insulting comments regarding the sexual orientation of the gay couple, followed by physical assault on them and destruction of some of the couples' property. Defendant Lynch didn't make any comments, but he joined in the assault by throwing a basketball against the back of the head of one of the victims.

The Court of Appeals rejects Lynch's argument that he shouldn't have been held liable based on the state of mind of his two friends. Just as in State v. Robertson, 88 Wn. App. 836 (Div. I, 1997) **March 98 LED:17** , the Lynch Court applies the usual rule of accomplice liability to malicious harassment. Under the general rule, if one or more of the other participants in a crime has the specific mental state prohibited by the crime, a person who knowingly aids in the commission of the crime is guilty of that crime, even if he or she does not have the specific motivation of the co-participant(s).

Result: Affirmance of King County Superior Court juvenile dispositions of guilt for malicious harassment against Jeffrey Allen Lynch, Dondrey Levon Whitted, and Aaron Ramone Jefferson; reversal of sentencing which increased the punishment based on convictions for related fourth degree assault – on sentencing issue, Court applies double jeopardy analysis not addressed in this LED entry.

**(8) PIERCE COUNTY ORDINANCE REGULATING EROTIC DANCE STUDIOS UPHELD** – In DCR, Inc. v. Pierce County, 92 Wn. App. 660 (Div. II, 1998), a 2-1 majority of the Court of Appeals upholds against a constitutional challenge a Pierce County ordinance regulating erotic dance studios.

Challenged portions of the ordinance were: a) a requirement that all erotic dancers perform on a stage 18 inches high and 10 feet from the closest patron; b) prohibition on i) direct tipping by customers and ii) soliciting by dancers for tips; and c) certain aspects of the licensing review process. The adult entertainment corporation's challenge was grounded in free speech and due process protections. The Court of Appeals rejects as a matter of law all of the corporation's arguments.

The dissenting judge asserts that the adult entertainment corporation had raised a sufficient factual dispute on the free speech issue to require hearings, rather than summary judgment, on that issue.

Result: Affirmance of Pierce County Superior Court dismissal of adult entertainment corporation's challenge to the Pierce County ordinance.

**(9) WORD "PROFANE" IN BELLEVUE PHONE HARASSMENT ORDINANCE NOT UNCONSTITUTIONAL** – In Bellevue v. Lorang, 92 Wn. App. 186 (Div. I, 1998), the Court of Appeals rejects defendant's challenge to his phone harassment conviction under a Bellevue ordinance which, among other things, prohibits use of "profane" language under certain circumstances.

"Profane" has two basic meanings: 1) an expression that is anti-religious, and 2) an expression that is vulgar. If the word had only the first meaning, then the phone harassment would be unconstitutional in violation of free speech protections, the Court of Appeals declares. However, if the term is limited to the second meaning, then it is not unconstitutional. The Court of Appeals rules that the term must be interpreted as meaning only "vulgar" and the jury should be so instructed. In this case the jury was not so instructed, the Court notes. However, the defendant's behavior was so clearly obscene and in violation of the clearly constitutional portions of the ordinance that any error in instructing the jury was harmless.

Result: Affirmance of King County Superior Court decision which had affirmed Bellevue Municipal Court conviction of Jon M. Lorang for telephone harassment under Bellevue's ordinance.

**(10) FISH AND WILDLIFE RULE REQUIRING FLUORESCENT HUNTER ORANGE UPHELD** – In Armstrong v. Department of Fish and Wildlife, 91 Wn. App. 530 (Div. II, 1998), the Court of Appeals holds that the Department of Fish and Wildlife acted within its statutory authority when it adopted WAC 232-12-055, a Department regulation which requires fluorescent "hunter orange" clothing in a broad range of enumerated hunting activities.

Result: Affirmance of Thurston County Superior Court decision upholding validity of WAC 232-12-055 against a class action challenge.

**(11) TACOMA NOISE ORDINANCE RESTRICTION ON CAR SOUND SYSTEMS SURVIVES CONSTITUTIONAL ATTACK** – In Holland v. City of Tacoma, 90 Wn. App. 533 (Div. II, 1998), the Court of Appeals rejects a constitutional challenge to that portion of a City of Tacoma ordinance prohibiting the operating of car sound systems at a volume that would be "audible" at a distance greater than 50 feet.

The Court of Appeals holds that the challenged portion of the noise ordinance was not facially overbroad under First Amendment free speech protections, nor was the ordinance void for vagueness under constitutional due process protections. The Court of Appeals leaves certain issues unresolved, including the issue of whether the ordinance would withstand challenge if applied to a person who, unlike plaintiff Holland in this case, claimed to be using the sound system to communicate to others, rather than just to listen for amusement.

Result: Affirmance of Pierce County Superior Court summary judgment ruling for the City of Tacoma in citizen's civil challenge to ordinance, except for reversal of Superior Court grant of attorney fees against Dwight Holland for pursuing a frivolous action.

**(12) PUBLIC RECORDS ACT REQUIRES DISCLOSURE OF RECORDS RE WAGES, HOURS, AND BENEFITS OF PUBLIC EMPLOYEES** – In Tacoma Public Library v. Woessner, 90 Wn. App. 205 (Div. I, 1998), the Court of Appeals rules in a Public Records Act case that records identifying the wages, hours, and benefits of individual employees of a public agency (Tacoma Public Library) are not exempt from public disclosure.

Disclosure of such information is not "highly offensive" to a reasonable person, and such information is a legitimate public concern, the Court of Appeals declares. Therefore, disclosure of such information does not violate the "right of privacy" of employees as defined under the Public Records Act.

On the other hand, individual employee identification numbers which would have allowed the records requesters access to library employee social security numbers, home phone numbers, and home addresses are exempt from disclosure, the Court holds.

Result: Reversal in part of order of Pierce County Superior Court which had allowed the Tacoma Public Library to delete the names of employees from the disclosed records; attorney fees denied to both parties.

**(13) BAIL PROPERLY FORFEITED ON ILLEGAL ALIEN WHO APPARENTLY PROCURED HER OWN DEPORTATION AFTER POSTING BAIL** – In State v. Banuelos, 91 Wn. App. 860 (Div. I, 1998), the Court of

Appeals holds that:

> It is within the trial court's discretion to order forfeiture of cash bail where the defendant, an alien who does not have legal status in the United States, fails to inform the prosecutor of an impending Immigration and Naturalization Service (INS) action, is deported while released on bail, and therefore does not attend the hearing for which bail is intended to guarantee her appearance.

The Court suggests that defendant Guillermina Banuelos' attorneys (who represented her in both the criminal and the INS proceedings) were involved in a "get out of jail free" scheme by procuring her rapid deportation while she was free on bail on drug charges.

Result: Affirmance of Skagit County Superior Court order forfeiting $10,000 cash bail.

**(14) COMMON LAW "NECESSITY" DEFENSE REJECTED IN MANUFACTURING MARIJUANA CASE** – In State v. Williams, ___ Wn. App. ___ (Div. II, 1998) [968 P.2d 26], Division Two of the Court of Appeals holds that the common law defense of "necessity" is not available for a person charged with use or possession of drugs classified as Schedule I Controlled Substances, including marijuana.

In past cases, Division Two and Division One of the Court of Appeals have held that a "necessity" defense can be asserted in marijuana cases under certain narrow standards (the State Supreme Court has never addressed the question). Now, a three-judge panel of Division Two has changed its collective mind, holding that the Legislature's placement of marijuana as a Schedule I Controlled Substance manifests a legislative decision that illegal activity in relation to the drug cannot be justified under a common law "necessity" defense.

Result: Affirmance of Pierce County Superior Court convictions of Jess Garner Williams for unlawful manufacturing of marijuana and unlawful possession of marijuana.

**LED EDITOR'S COMMENT: Coincidentally, the day before the Williams decision was announced, the "Medical Marijuana Initiative" took effect. See Q & A in January 1999 LED at page 21. If the Williams decision ultimately were to become the law of this state (as indicated above, there is presently a conflict of Court of Appeals decisions), those persons claiming a medical necessity to grow, possess or use controlled substances would be restricted to claiming protection under the initiative, not under a common law "necessity" defense.**

**(15) PTSD CANNOT BE BASIS OF CHARGE OF SECOND DEGREE CRIMINAL MISTREATMENT** – In State v. Van Woerden (and two others), 93 Wn. App. 110 (Div. II, 1998), the Court of Appeals rules that Post-Traumatic Stress Disorder (PTSD) does not constitute "great bodily harm" or "substantial bodily harm" within the meaning of RCW 9A.42.030, which defines criminal mistreatment in the second degree.

The State of Washington charged the operators of the OK Boys Ranch, a former group home in Olympia for delinquent and dependent boys, with second degree criminal mistreatment. The basis of the charge was that acts and omissions of the operators of the group home had caused PTSD in a number of the boys who had been victims of abuse at the home.

At the time of the alleged crimes, RCW 9A.42.030(1) provided:

> 1) A parent of a child, the person entrusted with the physical custody of a child or dependent person, or a person employed to provide to the child or dependent person the basic necessities of life is guilty of criminal mistreatment in the second degree if he or she recklessly, as defined in RCW 9A.08.010, either a) creates an imminent and substantial risk of death or great bodily harm or b) causes substantial bodily harm by withholding any of the basic necessities of life.

And at the time of the alleged crimes, the terms, "bodily injury," "substantial bodily harm", and "great bodily harm" were defined under RCW 9A.42.010(2) as follows:

> (2)(a) "Bodily injury" means physical pain or injury, illness, or an impairment of physical conditions;
>
> b) "Substantial bodily harm" means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part;

a) "Great bodily harm" means bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily part or organ.

Analyzing this statutory language in a light favorable to the accused, the Court of Appeals concludes that acts or omissions which cause mental disorders are not covered under the terms "great bodily harm" and "substantial bodily harm." Then the Court looks at the medical nature of PTSD and concludes that PTSD "does not meet the definition of "bodily injury" because it is foremost the impairment of a mental, as opposed to a physical, condition.

Result: Affirmance of Thurston County Superior Court order dismissing charges of second degree criminal mistreatment (multiple counts) against Thomas Van Woerden, Collette Queener and Laura Russell.

**(16) EVIDENCE OF "CONSTRUCTIVE POSSESSION" OF FIREARM AND "ARMED WITH A DEADLY WEAPON" SUFFICIENT** – In State v. Simonson, 91 Wn. App. 874 (Div. II, 1998), the Court of Appeals rejects defendant's arguments that there was insufficient evidence to convict him of unlawful possession (as a felon) of a firearm and to enhance his sentence based on his being "armed with a deadly weapon" while operating a methamphetamine lab. The Court of Appeals describes the facts of the case as follows:

> In November 1995, Simonson and Susan Robinson were living in a silver Airstream trailer (hereafter, the silver trailer). Simonson had a felony record.
>
> The silver trailer was located on property Simonson and Robinson had rented. The trailer was 30 feet long, with black plastic and masking tape covering the windows. It had a living area in front, a kitchen behind, and a small bedroom and bathroom separated from the rest by an accordion door. The record does not show the dimensions of the various rooms.
>
> In February 1996, a green travel trailer (hereafter, the green trailer) appeared on the property Simonson and Robinson had rented, and Simonson or Robinson began paying the landlord an extra $30 per month in rent. The windows of the green trailer were painted black.
>
> On March 11, 1996, Simonson was stopped for a traffic infraction and falsely identified himself as Rodger Jones. He was arrested and jailed on charges not related to those here.
>
> On March 14, 1996, while Simonson was still in jail, the green trailer exploded. The first person to arrive at the scene saw Robinson emerge from the silver trailer, badly burned.
>
> A few minutes later, emergency personnel found a loaded Lorcin 9 mm automatic handgun in the mud outside the green trailer. According to the police, the gun had "just been recently dropped," because it did not have rust or dew on it.
>
> The police retrieved fluids from the green trailer that tested positive for methamphetamine. They also found solvents, waste materials, and other residual chemicals related to the manufacture of methamphetamine. They concluded that the green trailer had been used as a meth lab for some time.
>
> Based on their investigation of the green trailer, the police obtained a search warrant for the silver trailer. When they executed that warrant, they found six guns in the bedroom area, including a loaded Smith and Wesson .357 revolver, a loaded Lorcin 9 mm semi-automatic pistol, and an unloaded Walther semi-automatic pistol, all in a cupboard above the bed; a loaded Coast-to-Coast 12-gauge pump shotgun behind a table opposite the bed; a Remington 12-gauge pump shotgun behind a television; and a Ruger .223 assault rifle behind a table. The police also found many of Simonson's personal effects, including men's clothing, a man's wallet with items containing his name, a photo album with pictures of him, and a gray nylon bag containing documents in his name.
>
> Additionally, the police found evidence that someone had been extracting pseudoephedrine in the bedroom area. The evidence included a sealed box containing 10,000 pseudoephedrine pills, addressed to Rodger Jones. The manufacturer had shipped 10,000 pills to Susan Robinson on February 7, 1996; another 10,000 to "Susie Simonson" on February 29, 1996; and another 10,000 to

> Rodger Jones on March 6, 1996. Testimony given at trial showed that extracting pseudoephedrine from cold or allergy tablets is often a step in the manufacture of methamphetamine.

The Court gives detailed analysis (omitted here) explaining why these facts and evidence support the jury's: a) verdict of unlawful possession of each of the charged guns and b) finding that defendant was armed with a firearm while committing his crime of manufacturing a controlled substance.

Result: Affirmance of Thurston County Superior Court convictions of Rodney B. Simonson on one count of manufacturing methamphetamine while armed with a deadly weapon and six counts of unlawful possession of a firearm; case remanded for resentencing (on an issue not addressed here).

**(17) VEHICULAR HOMICIDE CONVICTION UPHELD - A) TECHNICIAN DRAWING BLOOD DOESN'T NEED PERMIT FROM TOXICOLOGIST; AND B) INTOXICATION EVIDENCE SUFFICIENT** – In State v. Merritt, 91 Wn. App. 969 (Div. I, 1998), the Court of Appeals rejects a vehicular homicide defendant's arguments: a) that the technician doing a blood draw at a hospital following a fatal motor vehicle accident was subject to the statutory requirement of a toxicologist's permit applicable to blood analyzers; and b) that the following evidence of intoxication was sufficient to support the DUI element of the vehicular homicide statute – i) Merritt had a blood alcohol level slightly higher than 0.15; ii) he had poor physical coordination at the accident scene; iii) alcohol smell emanated from the vehicle interior; and iv) a cup of beer was near the vehicle.

Result: Affirmance of Kitsap County Superior Court conviction of Brian P. Merritt for vehicular homicide under RCW 46.61.425.

**(18) FELONY HIT-AND-RUN INVOLVING 1 COLLISION WITH 1 VEHICLE IS JUST 1 OFFENSE REGARDLESS OF NUMBER OF VICTIMIZED OCCUPANTS IN STRUCK VEHICLE** – In State v. Bourne, 90 Wn. App. 963 (Div. II, 1998), the Court of Appeals holds that a felony hit-and-run involving a single collision with a single vehicle is just a single offense even though there were three occupants in the struck vehicle and all were injured. However, the Court also holds that the perpetrator of a felony hit-and-run in this circumstance can be given an exceptional sentence on the basis that multiple persons were injured the accident.

Result: Affirmance of Myron Bourne's Cowlitz County Superior Court conviction and exceptional sentence for felony hit-and-run under RCW 46.52.020.

**(19) "INTIMIDATING A JUDGE" STATUTE UPHELD AGAINST CONSTITUTIONAL ATTACK** – In State v. Knowles, 91 Wn. App. 367 (Div. II, 1998), Division Two of the Court of Appeals upholds the "intimidating a judge" statute, RCW 9A.72.160, against a "free speech" challenge.

The pertinent facts and proceedings in Knowles are described by the Court of Appeals as follows:

> Between December 1995 and March 1996, Veryl Edward Knowles appeared in court as a defendant in various criminal matters in Kitsap County Superior Court before Judges Karen B. Conoley, Leonard W. Kruse, M. Karlynn Haberly, and Leonard W. Costello. During those proceedings, he sent letters, filed documents, and made statements to each judge, stating his intent to file liens on the judges' properties if they did not release him from custody and/or release his property; he warned that the judges would be subject to civil and/or criminal sanctions if they did not comply; and he claimed sovereign and diplomatic immunity from prosecution.
>
> On April 8, 1996, the State charged Knowles by amended information with four counts of intimidating a judge, in violation of RCW 9.72.160 and RCW 9A.04.110 (25)(d) and (j), and one count of barratry, in violation of RCW 9.12.101. At trial, Knowles moved to dismiss, arguing that the intimidating statute is unconstitutionally overbroad. The trial court denied the motion. The jury convicted Knowles on all five counts.

The pertinent statutory provisions in Knowles are set out by the Court of Appeals as follows:

> RCW 9A.72.160 provides:
>
> 1) A person is guilty of intimidating a judge if a person directs a threat to a judge because of a ruling or decision of the judge in any official proceeding, or if by use of a threat directed to a

judge, a person attempts to influence a ruling or decision of the judge in any official proceeding.

2) "Threat" as used in this section means:

   a) To communicate, directory or indirectly, the intent immediate to use force against any person who is present at the time; or
   b) Threats as defined in RCW 9A.04.110(25).

The State proceeded under subsection (2)(b), charging Knowles with "intimidating" based on the definition of "threat" at RCW 9A.04.110(25)(d) and (j). Those subsections provide:

> 25) "Threat" means to communicate, directly or indirectly the intent:
> …
>
> (d) To accuse any person of a crime or cause criminal charges to be instituted against any person; or
> …
>
> (j) To do any other act which is intended to harm substantially the person threatened or another with respect to his health, safety, business, financial condition, or personal relationships…
>
> RCW 9A.04.110(25)

The Court of Appeals holds that these statutory provisions, which have the purpose of promoting open and fair judicial decision making, are not "overbroad" under federal constitutional "free speech" analysis.

RESULT: Affirmance of Kitsap County Superior Court convictions of Veryl Edward Knowles for intimidating a judge (four counts) and barratry (one count).

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## NEXT MONTH

The May 99 LED will include, among other entries: (1) an article discussing police authority to detain, for identification purposes, persons suspected of committing violations—see note at page 7 above in this month's LED following the entry on the Chelly case; (2) a summary of the February 1, 1999 decision of Division One of the Court of Appeals in State v. Rulan Clewis, 970 P.2d 821 (Div. I, 1999) (where the Court held that officers went too far in their warrantless "search incident to arrest" of a drug dealer when they took him into the bathroom of the house where the arrest occurred and subjected him to a full strip search, including a visual inspection of his anal cavity); and (3) a summary of the February 11, 1999 decision of Division Three of the Court of Appeals in State v. Waters, 1999 WL 64576 (Division Three's decision in Waters addresses extraterritorial arrest issues, including "fresh pursuit" and "extradition" questions, in upholding the "felony eluding" arrest of an enrolled member of the Colville Confederated Tribes; the defendant was chased by non-tribal officers **to a point** on the Colville Indian Reservation **from a point** off the reservation in the City of Omak before being arrested on reservation trust land by those non-tribal officers; the non-tribal officers were assisted in the arrest by tribal officers—note that, while the arrest was upheld, the Waters case must be re-tried, as the Court of Appeals decision reverses the conviction of Thomas Lawrence Waters on procedural grounds which will not be addressed in detail in the LED).

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## LAW ENFORCEMENT MEDAL OF HONOR—NOMINATIONS ARE OPEN

In 1994, the Washington Legislature passed chapter 41.72 RCW, establishing the Law Enforcement Medal of Honor. This honor is reserved for those police officers who have been killed in the line of duty or who have distinguished themselves by exceptional meritorious conduct. This year's ceremony will take place Monday, May 10, 1999 at the Capitol Rotunda in Olympia, commencing at 1:00 PM. This is the first day of Law Enforcement Week across the nation.

The Law Enforcement Medal of Honor Committee is accepting nominations for those officers who will be honored in this year's ceremony. **Nominations must be postmarked no later than April 1, 1999.** If you wish to submit a nomination, and wish to obtain a copy of the Rules and Qualifications and blank Nomination Forms, **please call 206-389-2554 or write to Gary Fox, Secretary, Law Enforcement Medal of Honor Committee, P.O. Box 40116, Olympia, WA 98504-0116**. You may also obtain a copy of the rules and forms from your local Chief or Sheriff, as a complete set of these documents have also been sent to them. You may also contact the committee at the above phone number and address if you want assistance in the preparation of your nomination, or if you have any questions or concerns.

This ceremony is a very special time, not only to honor those officers who have been killed in the line of duty and those who have distinguished themselves by exceptional meritorious conduct, but also to recognize all officers who continue, at great risk and peril, to protect those they serve.

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